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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/624,777	07/25/2000	Gregory Kellogg	95,1408-CCC	7224
20306	7590	11/30/2005	EXAMINER	
MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP			LUDLOW, JAN M	
300 S. WACKER DRIVE			ART UNIT	
32ND FLOOR			PAPER NUMBER	
CHICAGO, IL 60606			1743	
DATE MAILED: 11/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/624,777

Applicant(s)

KELLOGG ET AL.

Examiner

Jan M. Ludlow

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/25/2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Art Unit: 1743

1. The amendment filed September 15, 2005 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material, which is not supported by the original disclosure, is as follows: The disclosure as originally filed does not support claim 1 as amended. There is no embodiment with first and second microchannels connecting first and second chambers, the first chamber having a volume of 1-150 ul, the second chamber containing a displacement fluid, the second channel further connected to a third chamber, and rotation causing displacement fluid to transfer the contents of the first chamber to the third chamber. Note that applicant has stated that the instant claims correspond to the embodiment of Figure 13, in which the examiner interprets Chamber A as the first chamber, B as the second chamber, C as the third chamber, F as the first capillary and G as the second capillary. G does not connect the first and second chambers, and the description on pages 49-50 does not specify the volume of chamber A as claimed. It is suggested that applicant carefully review the claims to ensure that the amendments accurately describe the invention. A listing of parts correspondence and notation of the portions of the specification supporting the amendments would assist both applicant and the examiner in verifying the accuracy of the claims.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims.
3. Note that Figure 13, showing the embodiment of Claim 1, lacks first and second channels connecting the first and second chambers.

4. Claims 1, 2, 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. It is unclear how the third chamber is connected to the second channel and/or the first chamber, or how the displacement from the first to third chamber proceeds in that the second channel connects the first and second chambers.

6. Applicant is requested to carefully review the disclosure and claims for any additional errors of this nature. Is the second channel represented by channel G, which is the fluid transfer channel corresponding in function to the second channel as claimed (connecting the first and third chambers for displacement of the sample from A to C).

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kopf-Sill ('702).

9. Kopf-Sill ('702) teaches a rotor and method of use. A second displacement fluid chamber 64 is coupled to a first chamber 50 via first channel 84. Fluid displaced from chamber 50 is moved to third fluid chamber 98,100 via second channel 88. See, e.g., figure 1 and figures 10-15. A sample of 50-200 ul is used and capillary depths of .3 and .6 mm are employed in the specific example (col. 7, lines 10, 61-62). Vents are provided

throughout the device ($Ax \cong$ in figure 2). This rejection is applicable to the extent that the claims are clear and definite.

10. Claims 1, 2, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Schembri ('193).

11. Schembri ('193) teaches a rotor and method of use. A second displacement fluid chamber 39 is coupled to the first chamber 15 via first channels 41. Fluid displaced from chamber 15 is moved to third fluid chamber 31 via second channel 33. See, e.g., figures 1-3 and col. 7, especially, lines 24, 51, and col. 8. Capillary dimensions of .05-.25 mm are employed in the specific example (col. 7, lines 45-46). With respect to air displacement channels, it is the examiners position that port 19 and or passage 33 permit air flow (col. 8, lines 20-25). This rejection is applicable to the extent that the claims are clear and definite.

12. Claims 1, 2, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Braynin et al. ('606).

13. Braynin et al. ('606) teach a rotor and method of use. A displacement fluid chamber 80 is coupled to a first chamber 60 via first channel 82. Fluid displaced from chamber 60 is moved to third fluid chamber 92 via second channel 94. Samples of .005-.03 ml are used (col. 4, line 15). Capillary dimensions of .1- 1 mm are employed in the specific example (col. 6, lines 50-55). With respect to air displacement channels, vent ports (e.g., 24, 26, 28, 30) are provided. This rejection is applicable to the extent that the claims are clear and definite.

Art Unit: 1743

14. Applicant's arguments with respect to claims 1, 2 and 7 have been considered but are moot in view of the new ground(s) of rejection.

To clarify the record, the examiner's statement that application 08/910726 was unavailable was in reference to the physical availability of the paper file itself, not that the application was unavailable for priority purposes.

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jan M. Ludlow whose telephone number is (571) 272-1260. The examiner can normally be reached on Monday-Thursday, 11:30 am - 8:00 pm.

Art Unit: 1743

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jan M. Ludlow
Primary Examiner
Art Unit 1743

Jml
November 28, 2005

SECRET

